

CPARB
Responsibility / Eligibility Task Force

Kent Carpenter's Hall

March 24, 2010

2:00 – 4:00 p.m.

The Responsibility/Eligibility Task Force was established by CPARB to discuss the issues regarding the application of supplemental responsibility criteria and the application of subcontractor eligibility in GC/CM in RCW 39.10.400.

Chair: John Ahlers

Vice-Chair: Ed Kommers

Introductions: Participants introduced themselves. There were no phone-in attendees.

Responsibility Statute (RCW 39.04.350): Mike Purdy recapped the statute and reviewed the following areas:

- Mandatory criteria
- Supplemental criteria
- Subcontractor Responsibility

The meeting participants each had an opportunity to discuss observations and concerns regarding the use of responsibility criteria.

Contractor comments:

- An overly restrictive criterion appears too often. For example: the names of loggers to be used on a project and requirements for a contractor to have worked on a specific length and size of pipe.
- Irrelevant criteria: “Future maintenance and service qualifications” even though those services were not included in the RFP.
- Many examples are available.
- Vague criteria such as “integrity and honesty” are of great concern.
- Contractors would like to know who to direct questions or inquiries to in any particular agency
- Contractors may not speak up about a problem with criteria until after the bid.
- Would a panel of experts be of help in designing criteria? Concerns were expressed about the validation of advice received. Contractors may offer a panel of experts on their own.
- Concerns were expressed regarding the verification of subcontractor qualification by the general contractor. There may be adverse interpretations of the statute.

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Public bodies (owners) comments:

- It would be helpful to be able to apply a “test” to the types of questions anticipated.
- Public bodies need to produce relevant criteria.
- The responses need to be evaluated fairly.
- Concerns were expressed regarding “less sophisticated” owners.
- Concerns might be classified as 1) How do owners create problems 2) How do contractors create problems in their response 3) Are there “systemic” problems with the process?
- What is the best way to train owners? Options were discussed.
- Some owners have staff that review criteria by project groups and question why the particular criteria are needed.
- Public bodies desire bids from qualified contractors.
- Many would prefer training to legislative changes.
- What are the best methods to determine a contractor’s skill?
- Does it make sense to establish a repository of best practices?
- The economy has had an impact on the responses by contractors and subsequent appeals.
- Many would prefer to not “re- invent the wheel,” in terms of language.
- How can public bodies get the technical experts familiar with the realities of the market?
- How can the examples of poor criteria be improved?
- There may be multiple areas of training: 1) How to write criteria for applicability; 2) Teach contractors how to respond.
- A checklist or test of answers to questions would be helpful as well as good examples. (Questions such as: Who did you talk to? What market checks did you do?)

Mike Purdy suggested categories of some of the concerns:

1. Overly restrictive criteria
2. No indication of the basis for evaluating the response to criteria
3. Bidding documents that do not indicate the deadline for the apparent low contractor to provide post bid pre award response to criteria
4. No specific deadline for bidders to appeal a determination of non responsiveness
5. Evaluation of vague items like “honesty and integrity”
6. Documents that mix up responsibility and responsiveness
7. Owners are not aware of market conditions and look for the “ideal contractor”
8. Contractors avoid bidding because of unrealistic criteria
9. Contractors avoid challenging criteria prior to the bid.

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Pre bid determination of subcontractor eligibility in GC/CM (RCW 39.10.400)

Ed Kommers summarized the issues as discussed in the February CPARB meeting:

- There are cases where it is being stretched to be a selection process, not just eligibility.
- Eligibility is being applied to small subcontracts, unnecessarily putting a burden on subcontractors.
- GC/CMs should publish all criteria, not just make it available. (This may require a statute revision.)
- Responses are expensive for subcontractors to complete compared to the benefit to the GC/CM or owner.
- A lot of subjective criteria are being used.
- Lack of predictability: Firms cannot predict if they will be determined eligible or not, but should be able to.
- Timing for protest and appeal actions is not clearly stated. (This may require a statute revision.)
- There are no criteria for evaluating subcontractors “financial resources.”
- A model approved by CPARB may help solve future issues.
- The hearing process has been beneficial and well received by many public bodies.

2010 Task Force Goals:

1. May: Look at examples of responsibility criteria. Discuss how to improve language. Review Mike Purdy’s draft of supplemental guideline revisions.
2. TBD: Provide comments on how to improve the “Suggested Guidelines for Bidder Responsibility”. Provide material for Appendices A and B.
3. TBD: Discuss Pre bid determination of subcontractor eligibility in GC/CM (RCW 39.10.400), and review a draft of a model developed by Ed Kommers.

The meeting adjourned at 4:00 pm.

Next meeting: May 20, 2010, at 10:00 a.m.

Location: 25120 Pacific Hwy S, Suite 200, Kent, WA